REMARKS

Claims 1-9, 13, and 15-16 are pending in the present application. Claims 1, 4, 5, 8, 13, 15 and 16 were amended in this response. Claims 10-12 and 14 were canceled, without prejudice. No new matter was introduced as a result of the amendments. Entry of the amendments and favorable reconsideration are earnestly requested.

Applicant wishes to thank the Examiner for the courtesy of the Examiner Interview on May 22, 2009, where the present claims and disclosure were discussed against the cited prior art. As a result of the Interview, Applicant is submitting the presently amended claims.

CLAIM REJECTIONS – 35 U.S.C. §112

Claims 1, 5, and 8-15 were rejected under 35 U.S.C. §112, second paragraph, as allegedly failing to point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Office Action questioned the manner in which the escrow accounts were claimed. In light of the present amendments, Applicant respectfully submits the rejection is overcome. Withdrawal of the rejection is earnestly requested.

CLAIM REJECTIONS – 35 U.S.C. §103

Claims 1-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Cretzler (US Patent 5,644,724), in view of Gryglewicz (US Patent 6,993,502) and Agee (US Patent 6,889,200). In light of the Examiner Interview and present amendments, Applicant respectfully traverses this rejection.

Specifically, the prior art, alone or in combination, fails to teach or suggest the features of "determining a first escrow amount in the computer system based on the first sales amount, wherein the first escrow amount is determined as one of: (1) a predetermined percentage of one or more of the first and second sales amounts, and (2) a sum of a predetermined percentage of at least one of the first and second sales amounts, and wherein said predetermined percentage comprising one of (1) a merchant tax rate, and (2) an estimate for generating escrow funds sufficient to pay a predetermined sum from the one or more of the first and second sales amounts

over a predetermined number of sales periods; determining in the computer system whether the second sales amount exceeds the first escrow amount; crediting a second escrow account with the first escrow amount when the second sales amount exceeds the first escrow amount; and crediting a merchant account with an amount equal to the difference between the second sales amount and the first escrow amount" as recited in independent claims 1 and 5, and similarly recited in claim 15.

As was discussed during the Interview Cretzler teaches a rudimentary tax collection system (col. 4, lines 25-47) where a transaction amount and a tax amount are determined and stored. As the amounts are summed for point-of-sale locations, merchants must notify banks, service banks and taxing authority banks of amounts to be collected for taxes (col. 5, line 48 – col. 6, line 5). Cretzler does not deal at all with escrow accounts for impounding escrow funds, and thus fails to teach the features recited above.

Regarding Gryglewicz, the document is related to a system that *aggregates* information relating to Internet sales for the purpose of determining the taxability of items (col. 1, lines 10-25). Regarding the use of escrow accounts, Gryglewicz discloses a main controller 40 that periodically requests funds *from a merchant bank* of each merchant for collecting taxes owed, and, such collected tax funds are either *deposited in an escrow account* from which funds are subsequently disbursed to the tax authorities, or the collected tax funds may be substantially immediately disbursed to the tax authorities (col. 8, lines 44-53; see also). Since Gryglewicz relies on the Automated Clearing House (ACH) to resolve monies owed between banks, the amounts received at the main controller (server 40) would be a <u>total</u> amount of purchase or sales transactions (see col. 8, lines 32-53), where the tax calculations would be performed. As such, Gryglewicz would not calculate a first escrow amount, as presently claimed, and credit a second escrow account when a "second sales amount exceeds the first escrow amount; and crediting a merchant account with an amount equal to the difference between the second sales amount and the first escrow amount."

Regarding Agee, the document teaches a system where a sale amount *and a tax amount* is transmitted from a merchant computer to a tax processing entity (col. 9, lines 1-25), where the entity processes the tax amount so that it may be allocated *between 2 or more taxing entities* (see, e.g., col. 4, lines 6-24; col. 14, claim 1: "determining an allocation of said tax amount to two or

more taxing authorities"). Agee is wholly silent regarding escrow accounts, and similarly fails to teach or suggest to credit a second escrow account when a "second sales amount exceeds the first escrow amount; and crediting a merchant account with an amount equal to the difference between the second sales amount and the first escrow amount."

Regarding Obviousness,

> Section 103 forbids issuance of a patent when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains."

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). See also *KSR*, 550 U.S. at 407 ("While the sequence of these questions might be reordered in any particular case, the [Graham] factors continue to define the inquiry that controls.")

The Supreme Court stated that in cases involving more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement, it will be necessary to "determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue." *Id.* at 417-418. The Court noted that "[t]o facilitate review, this analysis should be made explicit." Id. at 418 (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness")).

Rejections based on 35 U.S.C. § 103 must rest on a factual basis. In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967).

Applicant maintains that there is no apparent reason why one skilled in the art would combine the references in the manner suggested in the Office Action. As argued above, each of the Cretzler, Gryglewicz and Agee documents deal with tax collection from a fundamentally different manner, which results in each reference teaching away from the other. Aside from the fact that these documents deal with tax collection, their mode of operation is completely different, and the Office has not provided a factual basis why the combination would be proper. As such, the Office has failed to meet its burden in establishing a prima facie case of obviousness.

For at least these reasons, the Applicants submit that the rejections under 35 U.S.C. §103 are overcome and should be withdrawn. An early Notice of Allowance is earnestly requested. If any fees are due in connection with this application as a whole, the Examiner is authorized to deduct such fees from deposit account no. 50-1290. If such a deduction is made, please indicate the attorney docket number (021180-00053 (BRWN 20.199)) on the account statement.

Respectfully submitted,
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